

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Western Massachusetts Electric)	
Company for authorization for approval to)	
issue long-term debt to finance Prior Spent)	
Nuclear Fuel obligations up to a maximum)	D.T.E. 03-82
amount of \$52 million, pursuant to)	
G.L. c. 164, § 14 and 17A, and for an)	
exemption from the competitive bidding)	
requirements of G.L. c. 164, § 15, and the)	
par value requirements of G.L. c. 164, § 15A.)	
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**BRIEF OF
WESTERN MASSACHUSETTS ELECTRIC COMPANY**

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I. INTRODUCTION

On September 15, 2003, Western Massachusetts Electric Company (“WMECO” or the “Company”) submitted to the Department of Telecommunications and Energy (“Department”) its petition, pursuant to G.L. c. 164, §§ 14 and 17A, to issue and sell up

to \$52 million in aggregate principal amount of long-term debt to finance WMECO's Prior Spent Nuclear Fuel ("PSNF"). In connection with the proposed financing, WMECO requested an exemption from the requirements of G.L. c. 164, § 15, pertaining to advertisement of the debt issuance for the purpose of obtaining proposals, and from the requirements of G.L. c. 164, § 15A, pertaining to the issuance of all debt at par value.

In support of its petition, WMECO submitted the pre-filed testimony of Randy A. Shoop, Assistant Treasurer – Finance of Northeast Utilities (WMECO's parent company), and Jeffrey R. Cahoon, Director – Revenue Requirements for Northeast Utilities Service Company. The Attorney General was the only party to intervene in this proceeding. On December 3, 2003, the Department held both a public and evidentiary hearing in this matter. At that time, Mr. Shoop and Mr. Cahoon testified for WMECO in support of its requests. The Attorney General did not sponsor a witness.

At the hearing on December 3, Mr. Shoop's testimony and exhibits were entered into evidence as Exhibit WM-1. Mr. Cahoon's testimony and exhibits were entered as Exhibit WM-2, and several financial reports of WMECO and Northeast Utilities were entered as Exhibit WM-3. In addition, WMECO's responses to Department data requests DTE-1-1 through DTE-1-10 were made part of the record, as were WMECO's responses to Attorney General data requests AG-1-1 and AG-1-2. Subsequent to the hearing, the Company responded to one record request of the Department (Exh. DTE-RR-1).

II. HISTORY OF THE PSNF REQUEST

This proceeding is the second time the Department has adjudicated WMECO's request to issue long-term debt to finance WMECO's PSNF obligation. On September 6, 2002, as supplemented on December 12, 2002, WMECO requested approval for the

financing of PSNF in addition to two other requests no longer at issue.¹ That proceeding was docketed as D.T.E. 02-49.

In the D.T.E. 02-49 proceeding, the Department held an evidentiary hearing and Mr. Shoop and Mr. Cahoon testified for WMECO. The D.T.E. 02-49 proceeding was fully briefed by the Company and the Attorney General. On June 13, 2003, prior to the Department's decision, WMECO filed a motion, later granted by the Department, to withdraw the PSNF and interest rate hedge request from the Department's consideration. The Company's PSNF request in this proceeding, D.T.E. 03-82, is substantially similar to the Company's PSNF request in D.T.E. 02-49 and the Department has incorporated the entire record of D.T.E. 02-49 into D.T.E. 03-82. Tr., pp. 5, 28; *see* Exh. WM-1, pp. 4, 5, 6, 8, 10, 13.

The only material difference in WMECO's request in D.T.E. 03-82 compared to the D.T.E. 02-49 request is the addition of a sharing mechanism for the benefit of customers, as set forth in Mr. Cahoon's testimony. Exh. WM-2, pp. 6-7.²

III. STANDARD OF REVIEW

The standard of review for the Department to approve the issuance of stock, bonds, coupon notes or other types of long-term indebtedness by an electric or gas company is well established.³ The Department must assess, for the purposes of G.L. c. 164, § 14, that the proposed issuance is "reasonably necessary for the accomplishment of

¹ In D.T.E. 02-49, WMECO also requested approval for the issuance of long-term debt to replace short-term debt and approval to enter into interest rate hedges. Subsequent to WMECO's withdrawal of its request relating to PSNF and interest rate hedges, the Department, on June 27, 2003, approved WMECO's request for the issuance of long-term debt to replace short-term debt.

² The PSNF obligation balance to be financed increases, of course, over time. At the end of 2002, the amount was approximately \$46.8 million. By the middle of 2003, the amount was approximately \$48.5 million. Tr., pp. 11-12.

³ Long term refers to a period in excess of one year from the date of issuance. G.L. c. 164, § 14.

some purpose having to do with the obligations of the company or the public and its ability to carry out those obligations with the greatest possible efficiency.” *Boston Edison Company*, D.T.E. 00-62 (2000); *Fitchburg Gas & Electric Light Company v. Department of Public Utilities*, 395 Mass. 836, 843 (1985), citing *Fitchburg Gas & Electric Light Company v. Department of Public Utilities*, 394 Mass 671, 678 (1985);

The standard of review under c. 164, §17A, for approval of a guarantee, or investing in the securities of any corporation, association or trust is slightly different.⁴ The Department has stated that no explicit standard of review is provided by §17A. *Bay State Gas Company*, D.P.U. 19886 (1979). However, the Department has also recognized that the main purpose of §17A is to protect ratepayers by ensuring the utility’s strong financial position and that a proposed investment must be “consistent with the public interest.” *Id.* To that end, the Department has set forth the considerations in making the public interest determination as follows:

The General Court did not, in our view, intend that proposals be held “inconsistent with the public interest merely because a fair assessment of the relevant factors recognizes that both beneficial and negative aspects may attend those proposals. Consequently, even if a particular proposal has negative aspects, we will find that such a proposal is consistent with the public interest if, upon consideration of all its significant aspects viewed as a whole, the public interest is at least as well served by approval of the proposal as by its denial [*Boston Edison Company*, D.P.U. 850 (1983)].

See also Bay State Gas Company, D.P.U. 91-165.

Finally, the Department must determine whether a company has met the net plant test derived from G.L. c. 164, § 16. *Colonial Gas Company*, D.P.U. 84-96 (1984).

Under the net plant test, a company is required to present evidence that, after the

⁴ The Company has previously indicated that approval under §17A is not required for the PSNF financing. *See* Initial Brief, D.T.E. 02-49. However, to the extent such approval may be necessary or advisable, it is included here and in the Company’s prayer for relief.

proposed issuance, its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding). *Id.*, p. 5.

IV. THE FINANCING OF WMECO'S PSNF LIABILITY IS IN THE BEST INTEREST OF CUSTOMERS, IS CONSISTENT WITH G.L. c. 164, AND SHOULD BE APPROVED.

A. Background

The history behind WMECO's PSNF liability is set forth in detail in WMECO's Initial Brief in D.T.E. 02-49, pp. 6-7. It bears mention that as a result of the sale of Millstone station to Dominion Resources, Inc. ("DRI") in 2001, WMECO owes its PSNF obligation to DRI. Payment to DRI (who, in turn, will pay the funds over to the Department of Energy ("DOE")) is due prior to the time of the first delivery of prior spent nuclear fuel to the DOE. At this time, it is unclear when spent nuclear fuel will be accepted for disposal and, thus, when such payment will be due. D.T.E. 02-49 Initial Brief, pp. 6-7; Tr., p. 16.

The characteristics of the trust fund to be created are the same as those examined by the Department in D.T.E. 02-49. Exh. WM-1, p. 13. Those characteristics are set forth in the D.T.E. 02-49 Initial Brief, pp. 7-8. With respect to investments by the trust and the trust indenture, Attachments RAS-1 and RAS-2 in this proceeding provide Northeast Utilities Spent "Nuclear Fuel Trust Investment Policy (draft)" and "Indenture of Trust Reserve Funds for Millstone Nuclear Unit Spent Fuel Costs," respectively.

Because WMECO's PSNF request is largely identical to WMECO's earlier PSNF request in D.T.E. 02-49, which was fully adjudicated and is now part of the record in this proceeding, WMECO will not burden the Department with a repetition of the arguments made in D.T.E. 02-49. Rather, the Company will refer the Department to pertinent portions of WMECO's Initial Brief (hereinafter referred to as the "D.T.E. 02-49 Initial Brief") (attached hereto), focus on the sharing mechanism to benefit customers and respond, as warranted, to the AG's positions.

B. There Are Many Advantages to WMECO's Proposed PSNF Financing.

WMECO has previously set forth to the Department the numerous advantages of refinancing WMECO's PSNF liability. The D.T.E. 02-49 Initial Brief, pages 8 through 13 (attached), contains a description of these advantages and the Company specifically reiterates and incorporates those arguments as part of its brief in this proceeding.⁵

In addition to the points made in the Initial Brief earlier, Mr. Cahoon cogently testified in this proceeding to the fact that those same benefits continue to exist. Tr. pp. 44-52. Among his points, Mr. Cahoon stated that it is important to take a larger view and ask what type of financial structure makes the most sense for WMECO in light of its size and its divestiture of generation. Tr. pp. 49-52. In addition, Mr. Cahoon stated that a financing for the PSNF would be necessary at some point and that, given the currently low interest rates; it would be a "dangerous gamble" to wait to proceed with a financing. Tr., p. 51.

⁵ While the advantages set forth in the Initial Brief have not changed, it should be noted that as a result of the issuance of long-term debt for short-term debt approved by the Department in D.T.E. 02-49 the Company's debt/equity ratio is somewhat different. WMECO now calculates its debt/equity ratio as 41/59, a level of equity that remains too high. Exhibit WM-1, pp. 6-7. See Exh. WM-1 for a discussion of WMECO's current debt/equity ratios.

C. The Company Has Adopted a Sharing Mechanism to Address the Short-Term Effects of the Refinancing.

WMECO was candid in D.T.E. 02-49 in acknowledging that if interest rates remain at historically low levels, the short-term effect of the financing would be to increase the transition charge revenue requirement. D.T.E. 02-49 Initial Brief, p. 14. As it did in D.T.E. 02-49, WMECO urges the Department to view any possible short-term effects of financing the PSNF liability in the context of the larger effect of such a financing. The long-term effects are set forth in the D.T.E. 02-49 Initial Brief, pages 8 through 13, and in section B, above.

In view of the short-term effects (that is, prior to any general rate case), however, WMECO has in this proceeding introduced a further benefit to customers through a 50-50 sharing mechanism. Exh. WM-2, pp. 6-7. The operation of the sharing mechanism is relatively straightforward. WMECO estimates it will see an increase to net income of \$2.4 million as a result of the PSNF financing. Exh. WM-2, p. 6; Exh. WM-2, Attachment JRC-1, p. 1. In this proceeding WMECO proposes to split that savings with customers. *Id.* As a result, on a revenue requirements basis, customers would see an additional \$1.9 million yearly until the next general rate case proceeding is concluded. Exh. WM-2, p. 7. This credit to the overall level of transition charges to be collected would be seen at the same time as the short-term impact of the PSNF.⁶ In addition, any financing will not result in any immediate increase in the transition charge (that is, the cents per kilowatthour charge). Many factors are considered in the Company's proposed cents per kilowatthour transition charge and any charge must be approved by the Department. Tr., pp. 38-41.

⁶ See Tr., p. 38. Customers receive the benefit of \$1,924,000 at the same time the cost of \$7,875,000 is incurred.

D. The Attorney General's Claims Are Off-Base.

1. Overview

As WMECO stated in its Reply Brief in D.T.E. 02-49, the Attorney General's stated issues with financing the PSNF liability do not negate the very real advantages to customers of such a transaction. The Attorney General does not contest the fact that the PSNF funds will be used to pay for nuclear fuel decommissioning in the future. In addition, the Attorney General does not take issue with the position that interest rates are at an historic low and financing the PSNF liability at these low rates is preferable to a financing at presumably higher rates when the PSNF is paid. Finally, the Attorney General by his silence appears to recognize that the sharing mechanism proposed by the Company in this proceeding is an additional advantage compared with the request in D.T.E. 02-49.

2. The Attorney General Continues in His Misperception That WMECO's Request Is Connected to Millstone Station's Shutdown.

The Attorney General's opposition to WMECO's request appears to be fueled, in part, by the perception that spent nuclear fuel will not be taken from the Millstone site until the station is shutdown. Attorney General Initial Brief ("Attorney General Brief"), p. 5. It is unknown when Millstone unit 3 will cease operations but it is possible that the unit will operate for twenty or more years. Tr., pp. 17. However, this is completely irrelevant to when the federal government will begin to accept spent nuclear fuel at its repository, and, thus, when payment to DOE (through DRI) will begin. Tr., p. 20. Because the Attorney General apparently believes that the spent fuel will not be removed, or can not be removed, until the station is closed, he assumes that the trust will be in

existence until 2025. Attorney General Brief, p. 5. There is no evidence to support such a presumption. Mr. Cahoon testified, to the contrary, that spent fuel may be taken from Millstone while the unit(s) are operating and that payment to DOE is not relevant to the operational status of Millstone. Tr., pp. 19-20. Based on the record, it is just as likely that the DOE will require payment next month as some time years into the future. Accordingly, the Attorney General's estimate of the dollar impact of financing the PSNF, which is based entirely on the continuation of the PSNF trust until 2025, is completely unwarranted.⁷

3. The Attorney General's Purported, New, Restructuring Act Standard of Review Is Poppycock.

In trying to find some point to counter the Company's demonstration of the benefits of the PSNF financing, the Attorney General has presented an argument, developed in less than one page on brief, that because, in the Attorney General's view, transition costs are not now being mitigated, the Department can not approve the proposed PSNF financing. Attorney General Brief, pp. 7-8. The Attorney General's argument is ill-conceived.

The Attorney General bases his contention on four subsections in Section 1G of Chapter 164 of the General Laws. Unfortunately for the Attorney General, these subsections do not support his position. The first subsection cited is Section 1G(a)(2). This subsection deals with the Department's review of a rate reduction bond (securitization) financings. *See* Section 1H(a) (definition of "financing order"). WMECO's request in this proceeding has nothing to do whatsoever with rate reduction bonds and WMECO did not ask for any approval associated with the issuance of rate

⁷ The Attorney General also apparently assumes that WMECO will not file a general rate case for the next 23 years. There is no basis in the record for such an assumption.

reduction bonds pursuant to Section 1H. *Compare, e.g.*, WMECO's petition in D.T.E. 00-40 (2001). Accordingly, Section 1G(a) provides no support for the Attorney General's proposition.

The other three subsections cited by the Attorney General, 1G(b)(1), 1G(c)(iii) and 1G(d)(1) go to the showing that WMECO, or any electric company, must make in order to receive the Department's approval to collect transition costs. One of the applicable showings is that transition costs have been mitigated (by, for example, the sale of non-nuclear generation facilities). WMECO has made this showing and the Department determined which costs may be treated as transition costs by examining (at great length) and approving WMECO's Restructuring Plan. D.T.E. 97-120 (1999). There is nothing in the language cited by the Attorney General requiring continuous mitigation of costs that have already been determined by the Department to have been fully mitigated, and there certainly is no requirement for continuous Department approval of continuous mitigation of previously-approved costs.

Apart from misconstruing G.L. c. 164, §1G, the Attorney General compounds his error by taking as a given that the proposed financing does not mitigate costs. The Company's position is that its proposal when viewed in the long-term is in the customers' best interests and does mitigate costs. For the Department to approve the financing under sections 14 and 17A, it must find that the PSNF financing is consistent with the accomplishment of a legitimate purpose and is in the public interest. Thus, if it is legitimate and in the public interest pursuant to §§14 and 17A it also meets the standard for approval under G.L. c. 164, §1G, even assuming, *arguendo*, that Section 1G, is at all applicable.

4. The Attorney General Errs in Claiming That WMECO Has Already Recovered Its PSNF Costs and No Financing Is Appropriate.

In his brief, the Attorney General has asserted, for the first time, that because WMECO has collected certain PSNF funds from customers it should not be allowed to collect them again through a financing. Brief, pp. 5-6.

The uncontroverted evidence in this proceeding, however, is directly contrary to the Attorney General's position. WMECO's witness, Mr. Cahoon, testified at hearings that prior funds collected were used to support the operation of the Company and were used for the benefit of customers. Tr., pp. 62-62, 72. Had these funds not been used for the benefit of customers, WMECO would have had to issue debt to support the Company's operations. Tr., p. 73. Accordingly, WMECO's issuance of roughly \$50 million in debt to finance the PSNF obligation is not a double recovery and is in no way inconsistent with WMECO's responsibilities to its customers. The Attorney General's argument must be rejected.

5. The Attorney General's Contentions Regarding Financial Effects Are Unfounded.

Throughout his brief, the Attorney General mentions costs to customers that were never set out in the record (*see, e.g.*, on page 5, \$5.48 million and \$126.0 million). WMECO objects, as it did in D.T.E. 02-49, to testimony in the guise of a brief. The Attorney General, of course, could have sponsored a witness had he wished to present testimony on financial impacts. Short of that, he could have issued relevant discovery to

WMECO's witnesses and/or posed relevant questions to WMECO's witnesses at hearing. The Attorney General pursued none of this and is content to indulge himself with extra-record figures in his brief that the Department may not rely upon.

Regardless of the real number the Attorney General is trying to get to, his approach misses the main point: Managing the PSNF liability to provide the most long term benefit to customers. WMECO acknowledges that there may be no immediate benefit to customers from removing the PSNF liability from rate base and removing the customers' responsibilities for the interest on the PSNF liability. In one sense, WMECO is functioning as an 'investment vehicle' for its customers because its ratemaking capital structure provides a substantial return on the PSNF rate base credit. However, it is likely that this benefit will change as WMECO moves to a higher debt/equity allocation, its rate base increases, and interest rates rise. The Department should be focusing on the long term strategy for WMECO's customers and that strategy should respond to all the benefits from financing the PSNF liability, as set forth in Section IV, above. The near-sighted recommendation of the Attorney General is not in the best interest of WMECO's customers and accordingly, the Attorney General's claims should be rejected.

E. The Company Meets the Net Plant Test.

Mr. Shoop testified that as of June 30, 2003, WMECO's net utility plant (utility plant less accumulated depreciation and less construction work in progress) was \$398,514,000. In comparison, the sum of WMECO's outstanding stock and long term debt, including the issuance approved in D.T.E. 02-49 was \$189,196,000. Exh. WM-2, Attachment 5. Accordingly, the addition of \$52 million in new long term indebtedness increases the sum of its outstanding stock and long term debt to \$241,196,000. This level

remains approximately \$157 million less than net utility plant. *Id.*; Tr., pp. 32-33.

Accordingly, the net utility plant test under G.L. c. 164, § 16 is satisfied. No party has taken issue with this portion of the Company's request.

F. The Department Should Grant an Exemption from Section 15 of Chapter 164 of the General Laws.

In its petition, WMECO requests an exemption from the requirement in the General Laws requiring WMECO to invite proposals for the long term debt issuance through advertisements in certain newspapers. G.L. c. 164, § 15; Exh. WM-1, p. 17. In his pre-filed testimony, Mr. Shoop stated that:

It would be in the public interest for the Department to grant such an exemption because there is already a measure of competition in the Company's solicitation of various investment bankers with broad experience in the debt markets and access to potential investors. In addition, an exemption is in the public interest because such an exemption provides WMECO with the ability to respond quickly to changes in market conditions and to facilitate the use of a variety of pricing mechanisms and take full advantage of market conditions and obtain maximum attention from potential investors. Requiring competitive bidding pursuant to § 15 could jeopardize the flexibility sought in these circumstances [Exh. WM-1, pp. 17-18].

At hearings, Mr. Shoop reiterated the need for the exemption. He testified that WMECO is in constant dialogue with investment banks and their capital-markets groups and these activities allow WMECO to achieve the same goal as § 15. Tr., pp. 29-30. In D.T.E. 02-49, Mr. Shoop added that the advertising requirement, if not waived, would create the possibility that WMECO would miss an opportunity for customers. D.T.E. 02-49, Tr., p. 117.

The Department has previously recognized the benefits of waiving the requirements of § 15. In *Boston Edison Company*, D.T.E. 00-62 (2000), the Department stated "...the process provides adequate competition for the issuance of its securities

consistent with the objectives of newspaper advertising. In addition, it is appropriate to allow the Company the flexibility offered...to assist the Company's timely entry into the financial markets. Therefore, the Department finds that it is in the public interest to exempt the Company from the requirement of G.L. c. 164, s 15." Order, p. 11. *See also, e.g., New England Power Company*, D.P.U. 91-267 (1992), in which the Department used very similar language to approve an exemption from G.L. c. 164, § 15.

No party has objected to WMECO's request for the waiver from G.L. c. 164, § 15. Based on the un rebutted evidence in this proceeding and the Department's precedent, WMECO's request should be granted.

G. The Department Should Grant an Exemption from Section 15A of Chapter 164 of the General Laws.

In its petition, WMECO requests an exemption from the par value requirements of General Laws chapter 164, § 15, in connection with the issuance of long term debt.

Mr. Shoop stated in his pre-filed testimony that:

Such an exemption is in the public interest because market conditions may make it difficult for WMECO to price all of its debt at par value and simultaneously offer an acceptable coupon rate to prospective buyers. Investors rely on such discounts as a means to refine the price structure of a debt instrument to achieve a desired interest rate. Consequently, a discount provision offer enhanced flexibility.... Such flexibility could benefit WMECO's customers in the form of lower interest rates and a lower cost of capital [Exh. WM-1, pp. 18-19].

At hearings in D.T.E. 02-49, in response to a question from the Department, Mr. Shoop expanded on this statement by testifying that investors may want a certain coupon rate and it may not be possible to give them that rate with an issue at par. The ability to vary from a par issuance is "just a very fine-tuning process to meet with market conventions."

D.T.E. 02-49, Tr., pp. 100-101. Such flexibility gives the investor what it needs and, in turn, benefits WMECO's customers.

The Department has previously approved exemptions from the par value requirements of G.L. c. 164, § 15A. For example, in *Boston Edison Company*, D.T.E. 00-62 (2002), the Department found that:

the ability to issue debt securities below par value offers the Company increased flexibility in placing its issuances with prospective investors. This increased flexibility translates into an ability to issue debt securities in a timely manner to take advantage of favorable market conditions. Therefore, the Department finds that it is in the public interest to exempt the Company from the requirements of G.L. c. 164, § 15A. Order, p. 12.

No party has objected to WMECO's request for the waiver from G.L. c. 164, § 15A. Based on the unrebutted evidence in this proceeding and the Department's precedent, WMECO's request should be granted.

H. Conclusion on WMECO's PSNF Request.

WMECO has demonstrated that the financing of its PSNF liability is in the best interest of customers. The Company has shown that it is likely that the trust fund to be established through the financing would earn more than required by DOE, thus resulting in a direct benefit to customers. In addition, the financing will have the advantageous effect of matching current transmission and distribution company customers with current transmission and distribution costs and benefits. Also, the financing has the effect of recognizing the restructured entity that is WMECO and will bring WMECO's ratemaking capital structure more in line with its non-ratemaking capital structure, to the benefit of customers. Further, the financing of the PSNF liability will decrease WMECO's average cost of capital and benefit WMECO's customers in the long run, if not sooner. Finally, the sharing mechanism proposed by WMECO will bring even more benefits to

customers. Accordingly, the Department should approve the financing of the PSNF liability as submitted.

V. CONCLUSION

Based on the above, the Department should determine, consistent with G.L. c. 164, §§ 14, 15, 15A, 16, and 17A that:

- a. the issue by WMECO of up to \$52 million aggregate principal amount of long term debt is reasonably necessary to enable WMECO to finance WMECO's PSNF liability through a trust;
- b. the aggregate principal amount of long term debt to be issued hereunder shall not exceed \$52 million;
- c. WMECO may issue and sell the long term debt in one or more separate series, depending on market conditions at the time, in a total amount not to exceed \$52 million, during the period through December 31, 2004;
- d. granting an exemption from the requirements of newspaper advertisement of a public invitation for proposals in G.L. c. 164, § 15, is in the public interest and shall be granted with respect to the issue and sale for the long term debt;
- e. granting an exemption from the requirement of issuance at par in G.L. c. 164, § 15A, is in the public interest and shall be granted with respect to the issue and sale of the long term debt;
- f. WMECO has met the requirements of the net plant test contained in G.L. c. 164, §16.

Respectfully submitted,
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